

MEMORANDUM IN SUPPORT OF 28 USC § 2255 MOTION

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DECLARATION OF ELIZABETH C. ALDAN

1.
2. INTRODUCTION

3. This Habeas Motion accuses Mr. Arriola, defendant Aldan's
4. legal counsel during trial, of failing to give competent
5. representation during all critical stages of the trial, in
6. violation of Aldan's Sixth Amendment right to effective
7. counsel, and his Fifth Amendment right to be subjected to a
8. fair trial. As a result of this constitutional violation Aldan
9. moves the Court to issue a finding that Mr. Arriola's
10. representation was constitutionally deficient, and issue an
11. order to the prosecution to either subject Mr. Aldan to a new
12. trial, or to dismiss the Indictment.

13. This prosecution involves an allegation that Aldan gave
14. the Bank of Saipan dishonest service as president of the Bank,
15. in violation of 18 USC §§§ 371; 1343 and 1346. Specifically,
16. the prosecution accused Aldan of aiding a conspiracy created by
17. Mr. Montgomery and others to take ownership of the Bank, and
18. then loot the Bank of its funds by fraudulent loans and other
19. transactions. The prosecution alleged that Aldan aided the
20. conspiracy by ratifying or approving these fraudulent loans or
21. transactions without first seeking consent from the Board of
22. Directors of the Bank for these loans, a violation of Bank
23. Bylaws and the laws of the Commonwealth.

24. Had Mr. Arriola been competent he could have readily
25. proven to the Jury that Aldan did not aid the conspiracy, and
26. that he had no incentive to do so. Arriola's failure to
27. prepare for trial was the chief cause of Aldan being convicted,
28. and this deficiency should now be the cause for granting Aldan
his Habeas Motion.

I. HISTORY OF THE CASE

Mr. Aldan's involvement with the Bank of Saipan began early in 1997 when Mr. Benigno Fitiaf, a member of the Board of Directors of the Bank, asked Aldan to become a member of the Board. Aldan accepted the position with the provision that he need not own any stock.

The first meeting Aldan attended, held on March 7, 1997, was an emergency session to address the sudden departure of the Chief Operating Officer. During this meeting the Board expressed its dissatisfaction with the President of the Bank, and Board member Jose Lifoifoi suggested that Aldan take over the operation of the Bank. This suggestion was reasonable since Aldan's experience as Secretary of Finance for the Commonwealth of the Northern Mariana Islands, and the Administrator of the NMI Retirement Funds for government employees, would make this appointment an asset for the Bank. The suggestion was unanimously approved by the Board, and Aldan became Chairman of the Board and Chief executive Officer of the Bank.

The Board consisted of 11 members, each member having one vote. 3 members represented the Calvo brothers, 3 members supported the interest of Hillbroom, 3 members represented the Tan family, Aldan had one vote, and another member had 1 vote for the miscellaneous holders.

According to the Bylaws of the Bank, and the laws of the Commonwealth (CNMI), a vote for the approval of loans required

1. a quorum of 2/3 of the members, and approval of 2/3 of the
2. quorum. The Bylaws also required the recusal of any board
3. member with a conflict of interest. This provision created
4. problems with the Board members when Montgomery initiated his
5. purchase because they could no longer vote for or against any
6. loans as sellers of their stock. In fact, only Aldan remained
7. a disinterested party because he did not own any shares in the
8. Bank. As a result of this predicament 6 members ceased to
9. exist the moment when Montgomery bought their shares, and the
10. remaining members, with the exception of Aldan, no longer could
11. participate, or participated in Board meetings. With only five
12. members remaining, no quorum could be achieved.

13. Later that same year Aldan also took over the position of
14. President of the Bank. Aldan's salary was \$ 100,000 per year,
15. and this amount was continued without interruption until
16. February, 2002 when Mr. Montgomery was arrested and Aldan was
17. asked not to show up at the Bank.

18. In the summer of 1998, the bank was examined by the
19. Federal Deposit Insurance Corporation (FDIC), and the FDIC
20. urged that a number of recommendations be implemented. Based
21. upon these recommendations the Bank instituted a better loan
22. documentation process. Thereupon, Aldan brought in about \$ 10
23. million dollars in government deposits.

24. In the summer of 2000 the majority shareholders let it be
25. known that they were willing to sell their shares. Early 2001
26. Aldan received news from Mr. James Nava that there was an
27. interested buyer, and with permission of the Board members
28.

1. offered stock at \$18.00 per share. At this price a 100 %
2. purchase of the shares would amount to approximately \$ 5
3. million.

4. On June 23, 2001, a meeting was held in Las Vegas, Nevada
5. where Aldan and members of the Board met, for the first time,
6. Mr. Montgomery and Mr. Berkich. Montgomery explained that they
7. were interested in the Bank because it would offer a center to
8. process a debit card business he possessed. Montgomery added
9. that he was very close to completing a deal with the Mexican
10. government allowing him to compete with Western Unions'
11. remittance business. Aldan and the Board members left the
12. meeting with a favorable impression.

13. After a number of proposals and counter proposals the
14. Hillbroom and Calvo brothers' members signed a Purchase
15. Agreement for 60 % of the stock. The Tan family interest did
16. not sign because the Family was in the process of reviewing the
17. deal.

18. The Stock Purchase Agreement was reviewed from the
19. beginning to end by the Bank's legal counsel, Mr. Pangelinan,
20. who had an obligation to make sure that all provisions of the
21. Agreement complied with the Bank's Bylaws as well as the laws
22. of the Commonwealth. By him approving the Agreement, Mr.
23. Aldan was assured that there were no contradictions or
24. violations. Mr. Pangelinan was a government witness, and could
25. have testified to this fact if Mr. Arriola, Aldan's counsel,
26. had asked him.

27. A few weeks later Aldan received a letter from Michael
28.

1. Bradly, Chairman of United Forex, an investment company that
2. held Montgomery's stock portfolio, informed Aldan that the
3. portfolio was worth \$ 6.1 million "long call" ("long call"
4. means that this is the value achieved after 1 year on the
5. market), and that the Portfolio would be assigned to the Bank.
6. Aldan refused the offer because no information was obtainable
7. about the Portfolio, and wanted to liquidate it immediately
8. because of risk factors. Montgomery agreed, and shortly
9. thereafter Aldan received another letter from United Forex
10. informing Aldan that they have transferred the Portfolio to
11. Bank ownership, and that Aldan had the sole authority to
12. liquidate it as he deemed proper. This occurred immediately.

13. Aldan then reviewed the Portfolio with James Nava, a
14. financial consultant, who determined that the Portfolio was
15. worth \$ 3.6 million. This figure was independently confirmed
16. by Alan Bernstein, CEO of My Discount Broker, the firm that had
17. invested Montgomery's portfolio, who stated that the Portfolio
18. could be sold for \$ 3.7 million. My Discount Broker was
19. retained by Aldan to liquidate the Bank's Portfolio. My
20. Discount Broker remitted the funds realized from the sale to
21. Secure West, a financial institution, who in turn transmitted
22. the funds to the Bank of Saipan.

23. With that information Aldan contacted the Hillbroom and
24. Calvo brothers and told them to prepare their stock
25. certificates for sale. Aldan ordered the Accounting Manager,
26. Mr. Flores, to prepare a \$ 3.6 million Suspense Account to pay
27. the Hillbroom and Calvo brothers, and that all funds realized
28.

1. from the sale of the Bank's Portfolio must be immediately paid
2. into the Suspense Account. This occurred within a week.

3. Unknown to Aldan, Mr. Montgomery ordered Mr. Flores and
4. Ms. Francia to divert \$ 200,000 from the Portfolio into his
5. personal account without any processing of paperwork. Aldan
6. was never informed about this transaction. When the Portfolio
7. was exhausted, Mr. Flores came to Aldan and said that only \$
8. 2.6 million had been realized. Aldan told Flores to take all
9. funds found in Montgomery's personal account and apply it to
10. the Suspense Account. \$ 500,000 was found there, which allowed
11. Montgomery to purchase only 54 % of the stock instead of 60 %
12. available. The remaining 6 %, valued at \$ 487,000, was kept in
13. the Suspense Account based upon Montgomery's promise that more
14. funds would soon be available. At the end of the year, when
15. Montgomery did not produce more funds, Aldan closed the
16. Suspense Account, and had the Bank purchase this stock as
17. Treasury stock.

18. Aldan did not issue a Certificate of Ownership of 54 % of
19. the stock to Montgomery until after the Portfolio had been
20. liquidated, and after receiving approval from the Commissioner
21. of Banking, dated January 11, 2002.

22. There were no funds advanced to Montgomery to purchase
23. stock. The ownership of the Portfolio by the Bank, and the
24. creation of a suspense account, are legal activities that do
25. not need the approval of the Board. And in fact, the Board was
26. kept fully apprised of these developments at all stages since
27. they had a great interest in seeing it completed and getting
28.

1. paid.

2. Shortly after Hillbroom and the Calvo brothers had been
3. paid, the Tinian Dynasty Hotel and Casino requested
4. reconsideration of its \$ 5 million loan previously declined by
5. the Board. Aldan resubmitted the application to the Board, and
6. the Board again declined the loan. Aldan informed the Board
7. that Montgomery thought it was a good loan, thereupon the
8. members said, during a meeting called by Aldan shortly after
9. payment was made to the Calvo's and Hillbroom, "Let him [Mr.
10. Montgomery] approve it", meaning since Montgomery now owned the
11. Bank, let him make all the decisions.

12. The loan was approved by Montgomery, and disbursed by the
13. Bank with full knowledge of the members. Montgomery had become
14. very interested and active in the Bank's business almost
15. immediately after the completion of the sale of stock, even
16. though no Certificate of ownership had been issued by the
17. Banking Commissioner. The controlling law at this time was the
18. Purchase Agreement giving Montgomery, as majority share holder,
19. control over the Board, and the Bank's operation. The Bylaws
20. of the Bank also functioned to support Montgomery's position
21. since the laws required the sellers of stock to vacate their
22. membership to the Board.

23. On or about November, 2001, a Mr. Wilson applied for a \$ 5
24. million commercial loan to purchase additional shares in a
25. credit card company that he had interest in. Montgomery
26. referred the application to Aldan for final approval. Aldan
27. objected because he did not have authority to approve loans of
28.

1. such amount, and that Montgomery, as permitted by the Purchase
2. Agreement, was the sole authority to approve all loans.
3. Montgomery said he could not exercise his authority because of
4. a conflict of interest. Mr. Wilson was a close friend and
5. therefore delegated the authority to Aldan.

6. With this authority Aldan gave Wilson's application to Ms.
7. Francia, the Loan Officer, for evaluation. Aldan declined the
8. loan based upon Francia's evaluation that the application was
9. incomplete, and lacked collateral. Montgomery assured Aldan
10. that Wilson would guarantee a deposit of \$ 5.6 million to cover
11. the loan, and produced a Letter of Guarantee signed by Wilson.
12. Aldan refused, saying that Wilson must first produce \$ 5.6
13. million. But upon the personal recommendation of Montgomery
14. that Wilson was of impeccable character with a wealthy family
15. background, Aldan agreed to approve the loan.

16. Loans are approved based upon an evaluation of the "three
17. 'C's", which consists of "character", "credit" worthiness, and
18. the "capacity" to pay. Montgomery repeatedly vouched for
19. Wilson's character and his ability to pay, and Aldan had no
20. reason to mistrust Montgomery at that time.

21. During the time that Ms. Francia evaluated Wilson's
22. application for \$ 5 million loan, a request for a \$ 500,000
23. advance was made by Wilson. Unknown to Aldan, this advance was
24. made when Montgomery told Francia and Flores that Aldan had
25. approved the advance. No documentation was produced by
26. Montgomery. Aldan was on a business trip to a branch office on
27. Rota at this time, and upon returning and learning about the
28.

1. advance, angrily told Francia never to do this again without
2. first confirming that he, Aldan, had approved such a matter.
3. Aldan also told Montgomery never to do anything like this
4. again.

5. On January, 2002, Aldan sent Francia and Flores to Plano,
6. Texas, in order to be trained at the credit card facility that
7. Wilson allegedly owned. They were very impressed with the
8. operation and Aldan felt comfortable with the idea of Wilson
9. transferring his operation to Saipan. This report from Francia
10. and Flores, and the fact that the Banking Commissioner had
11. approved the purchase by Montgomery, gave Aldan confidence that
12. Montgomery was a reputable businessman.

13. Montgomery became very active in the operation of the Bank
14. after the sellers had been paid. He created an "International
15. Affairs Department" after he received approval of the Banking
16. Commissioner to run the Bank, and made himself president of
17. this department. The Bank rules and the Purchase Agreement
18. allowed him to do this since he was the majority shareholder
19. with 54 %, and Mr. Pangelinan, the Bank's legal counsel, had
20. assured Aldan that this was within legal bounds. From this
21. office Montgomery planned to supervise international deposits
22. and loan applications. He ordered Aldan to prepare a
23. Memorandum stating that Montgomery would be the sole entity
24. that would approve all loans that before had been approved by
25. the Board. Aldan transmitted the Memorandum to all Board
26. members, but no member responded, and Aldan took this silence
27. to mean that no Board member objected to the new procedure.
28.

1. On or about December, 2001, Aldan applied for a real
2. estate loan of \$ 500,000. This loan was intended to construct
3. a couple of two story houses on land that Aldan had acquired
4. with a prior loan of \$ 100,000 that had been given about 2
5. years before. Part of this loan was applied to the purchase of
6. land and house on Rota as an investment, and to refinance the
7. remaining balance of the original loan. Aldan asked the Loan
8. Manager, Mr. Sablan, to complete the application using the
9. information on the prior application, and to inform Aldan of
10. any deficiencies. The new loan was completed and Sablan
11. recommended approval to Montgomery based, on part, because the
12. loan was collateralized by real property. The fact that the
13. loan was fully collateralized negated the need for an
14. appraisal. Montgomery approved the loan and Aldan account was
15. credited with the amount. Aldan paid the balance of the prior
16. loan, and paid for the property in Rota. Aldan also paid the
17. contractor \$ 40,000 to begin construction of the 2 story
18. houses. The concrete foundations had already been poured and
19. completed before March 1, 2002. However, the project was
20. stopped when Aldan learned from an employee of the Bank that
21. the F.B.I. had seized all his accounts. The balance was
22. deposited in certificates of deposits with maturity coinciding
23. with the construction phases. The two houses were slated to be
24. completed by August, 2002. The Bank's Board was not advised of
25. these transactions because they had already expressed a
26. disinterest in the operation of the Bank.

27. About the time that Aldan received his loan Mr. Sablan
28.

1. came to Aldan and said that Montgomery wanted a personal loan
2. of \$ 260,000. Sablan recommended that the loan be approved
3. based on the fact that Montgomery owned 54 % of the Bank, and
4. thus this loan was fully collateralized. Montgomery did not
5. want to approve his own loan due to a conflict of interest,
6. thus Aldan approved the loan based on the recommendation given
7. to him. Besides the authority to approve loans delegated to
8. him by Montgomery, Aldan was the sole remaining member of the
9. Board due to the fact that all other members had defaulted
10. their authority by 6 members having been paid, and the
11. remaining 5 expecting to be paid shortly.

12. On or about February, 2002, shortly before Aldan left for
13. Washington D.C. on a business trip, Ms. Francia came to Aldan
14. wanting him to presign a document confirming that a wire
15. transfer had occurred. Francia explained that it was about a
16. wire to be transmitted to Mrs. Hom's husband in Hong Kong.
17. Montgomery owed Mrs. Hom \$ 240,000 and she wanted it returned.
18. Aldan informed Francia that no such wire could be executed
19. because Montgomery had no funds in his account due to the fact
20. that all his funds had been applied to the purchase of stock.
21. Aldan said that Francia could have the document signed by the
22. Chief Operating Officer, Mr. Thomas Schoen, who also had
23. authority to confirm the transmission of wires. Francia begged
24. Aldan to sign because she did not get along with Mr. Schoen.
25. This plea, and because she assured Aldan that the wire would
26. not be sent before money would appear in Montgomery's account,
27. Aldan presigned but did not date the document. It was only
28.

1. during trial that Aldan discovered that the wire had been
2. improperly sent and that it had been sent in his absence. It
3. was the Accounting Manager, Mr. Flores, who had signed the
4. approval for the wire since it was his duty to ensure that the
5. wire was fully funded. Aldan had previously warned Flores never
6. to transmit a wire or to incur any expenses without first
7. checking that sufficient funds existed to cover the transaction
8. even when the document bears his or Aldan's signature.

9. It was never Aldan's duty or authority to approve a wire
10. transfer of any kind. His duty was only to review, upon
11. completion of the transmission, that the wire had been sent.
12. This confirmation document is the item that Aldan signed, not
13. any approval to sent the wire.

14. Montgomery was arrested and charged in a multi count
15. indictment charging conspiracy, bank fraud, and wire fraud on
16. or about March, 2002. Wilson and Berkich were also arrested
17. shortly thereafter with similar charges.

18. Aldan was arrested in April, 2002, and charged in a five
19. count superseding indictment charging conspiracy to commit wire
20. fraud, wire fraud, and deprivation of honest service.

21. Montgomery, Berkich, and Aldan went to trial on June,
22. 2003. Wilson became a cooperating government witness, and the
23. Jury convicted Montgomery and Berkich on most counts, and Aldan
24. was found guilty on Counts 1 and 5. Montgomery was sentenced
25. to 20 years imprisonment, Aldan received 10 years, and Wilson
26. was given a 5 year sentence. Berkich committed suicide.

27. Aldan fired his attorney, Mr. Arriola, right after trial,
28.

1. and retained Mr. Trapp for sentencing and appeal. The Ninth
2. Circuit affirmed the convicted, but remanded for resentencing
3. based on a Booker violation. Resentencing was denied by the
4. court on September 6, 2005.

5. During trial Aldan discovered, from newspaper articles,
6. that Arriola was himself facing criminal charges brought by the
7. Commonwealth. He was charged with sexual abuse of a minor. He
8. assured Aldan that his pending trail would not interfere in his
9. representation, but Arriola never prepared for trial, as
10. promised, and in fact became drunk every weekend.

11. Recently, in a drunken fit of rage, Arriola beat his wife
12. and was charged with domestic violence by the Commonwealth.

II. ARGUMENT

Count I of the the Indictment alleges that Tomas B. Aldan failed to give the Bank of Saipan his 'honest service' (18:1346) when he aided the conspiracy of Mr. Montgomery and others (18:371) to defraud the Bank by approving, as president of the Bank, illegal loans and wire transfers (18:1343) of Bank funds. The government repeatedly asserted that Aldan's malfeasance consisted of him failing to first obtain approval for loans to the conspirators from the Board of Directors, a violation of Bank Bylaws, and laws of the Commonwealth.

Count 5 alleged that Aldan approved an illegal wire transfer that had been obtained through "materially false and fraudulent pretenses", which deprived the Bank of Aldan's "honest services".

The overt elements of the offense are:

A. Aldan illegally advancing Bank funds to the conspirators towards the purchase of Bank stock by failing to first seek approval of the loan from the Board.

B. Aldan ratifying a \$ 500,000 advance on a \$ 5 million loan to Mr. Wilson, Montgomery's coconspirator, who allegedly owned Sweven Systems, and then allowed the disbursement of the remaining \$ 4.5 million without first obtaining approval for the loan from the Board.

C. Aldan illegally approving a \$ 260,000 personal loan to Montgomery without first obtaining approval from the Board.

D. Aldan illegally taking a \$ 500,000 real estate loan by failing to first obtain approval from the Board. This loan

1. is the "sweetheart" incentive the prosecution alleges which
2. enticed Aldan to aid the conspiracy.

3. E. Aldan authorizing an illegal \$ 240,000 wire transfer
4. and concealing the transaction from the Board.

5. The following will demonstrate that due to Mr. Arriola's
6. deficient performance in preparing for trial caused Aldan to
7. be convicted when the available evidence would have shown the
8. Jury that Aldan did not commit the offenses charged, or that
9. he did not give dishonest service to the Bank.

10. Mr. Arriola's failure to prepare for trial failed to
11. subject the prosecution's case to a meaningful adversarial
12. testing during trial, and at closing arguments. It is the
13. preparation for trial which constitutes the most critical
14. period of the trial since it is at that time that a defense
15. can be formulated, and a list of documents and witnesses
16. prepared. Nunes v. Mueller, 350 F.3d 1045, 1052-53 (9th Cir.
17. 2003)(granting Mueller's motion for new trial based upon
18. ineffective assistance of counsel)

19. The following presentation will address each of the overt
20. acts alleged by the prosecution and demonstrate that in each
21. case Mr. Arriola could have presented a competent defense had
22. he properly prepared to do so. Aldan then will address Count
23. 5 and show that he could not have approved the wire transfer
24. because it was not his job to do so. Finally, Aldan will argue
25. that counsel's closing argument was a rambling and incoherent
26. babbling which did more harm than good, and should warrant a
27. new trial without more.

28.

1. A. THE \$ 3.6 MILLION SALE OF BANK STOCK

2.
3. While the total value of the Bank's stock came to about
4. \$ 5 million, it was agreed that only two parties would
5. initially sell 60 % of the stock for about \$ 3.6 million to
6. Mr. Montgomery, who agreed to sell his stock portfolio and buy
7. the Bank stock with the proceeds. A complex procedure was set
8. up by which Montgomery's portfolio was first handed over to
9. the Bank, liquidated by Aldan for the Bank, the sellers paid
10. for their stock, and concluding with Montgomery receiving his
11. Certificate of ownership.

12. The prosecution alleged that this transaction amounted to
13. an 'advance' or loan to Montgomery, and violated the Bylaws of
14. the Bank because Aldan approved the transaction without first
15. obtaining consent from the Board of Directors of the Bank for
16. the loan. The prosecution also alleged that Aldan failed to
17. ensure that there was sufficient collateral for the loan, which
18. gave additional reason to suspect Aldan of giving dishonest
19. service to the Bank. These acts by Aldan were in violation of
20. 18 USC § 1346, and 18 USC § 1343 when the 'advance' was
21. transmitted over interstate communications facilities.

22. The prosecution's allegation are facially false. Aldan
23. never created an 'advance' or loan for Montgomery, nor anyone
24. else, towards the purchase of Bank stock.

25. Upon the completion of a stock Purchase Agreement, fully
26. analyzed and approved by the Bank's counsel, Aldan insisted
27. that Montgomery's stock portfolio be first transferred to the
28.

1. Bank before he would take any other action. See HISTORY OF THE
2. CASE, supra. This transfer was not for the convenience of
3. Montgomery, but to have the Bank become the sole owner of the
4. Portfolio.

5. When the Portfolio became the property of the Bank Aldan
6. then created a Suspense Account to receive the monies from the
7. liquidation of the Portfolio. This Suspense Account also paid
8. the sellers of 60 % of the Bank's stock their money. Thus the
9. Bank was fully collateralized by its ownership of the
10. Portfolio.

11. Unfortunately, the liquidation achieved only \$ 2.8
12. million, even though My Discount Broker, the liquidator, had
13. assured Aldan that it would achieve \$ 3.7 million, sufficient
14. to cover the \$ 3.6 million the two sellers wanted. Whatever
15. the reasons are for the shortfall, perhaps a downturn of the
16. Market, Aldan cannot be blamed for the deficiency, and
17. Arriola, Aldan's attorney, should have established during trial
18. who had been responsible.

19. Unknown to Aldan, Montgomery intercepted \$ 200,000 by
20. ordering two other executives (Mr. Flores and Ms. Francia) to
21. place this amount in his personal account. Aldan never was
22. told of this diversion, and first learned about it during trial
23. when the two executives testified about the event.

24. Aldan was told of the shortfall by Mr. Flores when the
25. liquidation of the Portfolio had been completed. Aldan
26. immediately ordered Mr. Montgomery's personal account to be
27. taken and paid into the Suspense Account. But only \$ 500,000
28.

1. was discovered, and this increased the \$ 2.6 million to \$ 3.1
2. million, sufficient to pay for 54 % of the Bank's stock. The
3. remaining 6 %, valued at \$ 487,000, was kept in the Suspense
4. Account until the end of the year when it was transferred into
5. the Bank's Treasury Stock. This account was kept open based
6. upon Montgomery's promise that he would soon obtain more funds
7. to pay for the remaining 6 %. Montgomery never did.

8. The above events prove, had they been competently
9. presented to the Jury, that Aldan never ordered an 'advance' or
10. loan, thus there was no need to apprise the Board of anything.
11. The creation of a suspense account is not a transaction
12. requiring Board approval. Neither did Aldan give 'dishonest'
13. service to the Bank by his remedial actions. The Bank did not
14. suffer any harm, thus there can be no inference drawn of a
15. dishonest intent, a necessary element of § 1346. The fact that
16. he took Montgomery's personal account greatly militates against
17. an inference that he assisted Montgomery in the fraud.
18. Moreover, even if the Board had been required to vote an
19. inherent conflict of interest existed from the time that the
20. Board members wanted to sell their stock. By this factor alone
21. none of the Board members, with the exception of Aldan who
22. owned no stock, could vote to approve or disapprove a loan.
23. Arriola should have made the Jury aware of this fact, but
24. failed to do so because he had not prepared for trial.

25. Had Mr. Arriola prepared for trial he would have
26. understood, from consulting with Aldan, the nature of the above
27. transactions, and could have prepared a meaningful defense.

28.

1. From Bank documentation Arriola could have established that the
2. Bank became the owner of the Portfolio before the sellers were
3. paid. He could have produced two letters from Michael Bradley
4. and Darren Smith, Chairman and Secretary of United Forex, the
5. company who transferred Montgomery's portfolio to the Bank,
6. which gave notice of the transfer of ownership. The dates of
7. these letters would have proven that the transfer was made
8. BEFORE any money was paid to the sellers of Bank stock. And if
9. that was not enough he could have subpoenaed these officers and
10. have them testify and explain to the Jury the meaning of the
11. two letters.

12. There was also the Bank's computer print-out of the
13. Portfolio after it had been transferred, giving a date. Then
14. there are remittance records from Secure West, the financial
15. institution that transmitted funds from My Discount Broker to
16. the Bank of Saipan. These records would have proven that there
17. was no 'advance'. All these records were maintained by Mr.
18. Flores, the Accounting Manager of the Bank, and he could have
19. been forced to produce them when he was a witness for the
20. prosecution.

21. He could have subpoenaed Mr. Bernstein, the CEO of My
22. Discount Broker, and have him testify where the funds of the
23. Portfolio had been sent to, and answer why the original
24. estimate of \$ 3.7 million that he gave Aldan suddenly became
25. only \$ 2.8 million. The answers to these questions would have
26. dissipated the prosecution's innuendo that Aldan was giving the
27. Bank dishonest service.

28.